

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÁHAN

2022 (SECOND) Regular Session

VOTING RECORD

NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
	Senator V. Anthony Ada	✓				
Senator Frank Blas Jr.	✓					
Senator Joanne Brown	✓					
Senator Christopher M. Dueñas	✓					
Senator James C. Moylan		✓				
Vice Speaker Tina Rose Muña Barnes	✓					
Senator Telen Cruz Nelson	✓					
Senator Sabina Flores Perez	✓					
Senator Clynton E. Ridgell	✓					
Senator Joe S. San Agustin	✓					
Senator Amanda L. Shelton	✓					
Senator Telo T. Taitague	✓					
Senator Jose "Pedro" Terlaje	✓					
Speaker Therese M. Terlaje	✓					
Senator Mary Camacho Torres	✓					

Speaker Antonio R. Unpingco Legislative Session Hall
Guam Congress Building
December 16, 2022

TOTAL

14

1

Aye

Nay

**Not
Voting/
Abstained**

**Out
During
Roll Call**

Absent

Excused

CERTIFIED TRUE AND CORRECT:

RENNAE V. C. MENO
Clerk of the Legislature

I = Pass

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 361-36 (COR)

As substituted on the Floor.

*

Introduced by:

Sabina Flores Perez

AN ACT TO *ADD* A NEW ARTICLE 8 TO CHAPTER 1 OF TITLE 22, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO ADOPTING THE NEW SOURCE REVIEW RULE (NSRR) FOR NEW AND MODIFIED MAJOR SOURCES IN SULFURE DIOXIDE (SO₂) NONATTAINMENT AREAS TRANSMITTED BY THE GUAM ENVIRONMENTAL PROTECTION AGENCY.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the Clean Air Act requires compliance with National Ambient Air Quality
4 Standards (NAAQS) for criteria air pollutants which currently includes sulfur
5 dioxide (SO₂), carbon monoxide (CO), nitrogen dioxide (NO₂), Ozone (O₃), Lead
6 (Pb), and Particulate Matter (PM_{2.5} and PM₁₀). Furthermore, those areas not in
7 compliance with and not attaining NAAQS levels are designated by the United
8 States Environmental Protection Agency (USEPA) as nonattainment areas for the
9 particular pollutant(s).

10 *I Liheslatura* further finds that USEPA designated two (2) nonattainment
11 areas on Guam. The Piti-Cabras area of Guam was designated as not attaining the
12 2010 SO₂ Primary NAAQS on January 9, 2018. The area of nonattainment is a

1 6.074-kilometer radius area from a point between Units 1 and 2 and Units 3 and 4 of
2 the Guam Power Authority (GPA) Cabras Station. The other nonattainment area is
3 a 3.5 kilometer or 2.2-mile radius area from the Tanguisson power plant, although
4 the plant is no longer operating.

5 *I Liheslatura* further finds that the Guam Environmental Protection Agency
6 (GEPA) must prepare a State Implementation Plan (SIP) revision to show attainment
7 of the standard within five (5) years of the effective designation date. Furthermore,
8 the adoption of the proposed New Source Review Rule (NSRR) is part of the
9 requirements of the SIP Revision.

10 *I Liheslatura* finds, as required by Part D of the Clean Air Act, that Guam is
11 required to show that it will be in attainment by the year 2023. To this end, GEPA
12 has completed the baseline emissions inventory for 2020. In 2020, the emission
13 inventory for SO₂ for Guam was 9197.04 tons. The estimated emissions inventory
14 for SO₂ in 2023 is 3.336 tons - a reduction of 9,193.704 tons per year of SO₂. Once
15 the Guam Power Authority has commissioned the new combined cycle power plant
16 and decommissioned Cabras 1 and 2, Guam will be in full attainment for the 2010
17 SO₂ NAAQS.

18 *I Liheslatura* finds that Guam does not have local rules or regulations for the
19 review of new major sources and major source modifications in nonattainment areas.
20 Currently, USEPA conducts all reviews of new major sources or modifications to
21 major sources in attainment and nonattainment areas. Guam EPA administers an
22 approved air pollution control program under 40 CFR Part 69. As a requirement of
23 Part D of the Clean Air Act, Guam is required to promulgate and adopt a new local
24 SO₂ major source or major source modification nonattainment NSRR.

25 *I Liheslatura* further finds that the NSRR will not increase the cost to the
26 regulated community, but it will shift the application payments from USEPA to
27 Guam EPA. Upon adoption of the NSRR, Guam EPA will accept all payments for

1 new major source and major modifications to major sources in SO₂ nonattainment
2 areas in Guam.

3 *I Liheslaturan Guåhan*, therefore, intends to adopt these proposed rules and
4 regulations in order to meet the requirements of Part D of the Clean Air Act and
5 align the Guam EPA regulations with federal regulations. Furthermore, these rules
6 and regulations would administratively satisfy the following: (1) compliance with
7 the USEPA’s Clean Air Act Part D requirements for Nonattainment Areas for the
8 2010 SO₂ NAAQS; (2) adherence to the Three Thousand Seven Hundred Fifty
9 Dollar (\$3,750) application fee for new major nonattainment area (NAA) sources
10 and the One Thousand Dollar (\$1,000) fee for significant modifications to a major
11 NAA source in accordance with 22 GAR § 1423(c)(1), (d), and (f) respectively; and
12 (3) avoid sanctions for failing to submit an attainment plan for the 2010 SO₂
13 NAAQS.

14 **Section 2.** A new Article 8 is hereby *added* to Chapter 1 of Title 22, Guam
15 Administrative Rules and Regulations, to read:

16 **“ARTICLE 8**

17 **GUAM AIR POLLUTION CONTROL STANDARDS AND REGULATIONS**
18 **NEW SOURCE REVIEW REQUIREMENTS FOR NEW AND MODIFIED**
19 **MAJOR SOURCES IN SO₂ NONATTAINMENT AREAS ADOPTED ON**
20 **OCTOBER 17, 2022**

21 § 1801. Applicability Procedures.

22 § 1801.1. Preconstruction Review Requirements.

23 § 1801.2. Nonattainment Major New Source Review (NSR) Permit
24 Requirement.

25 § 1801.3. Emission Calculation Requirements to Determine New Source
26 Review (NSR) Applicability.

27 § 1801.4. Major Sources with Plant-Wide Applicability Limitations.

- 1 § 1801.5. Projects That Rely on a Projected Actual Emissions Test.
- 2 § 1801.6. Secondary Emissions.
- 3 § 1801.7. Stationary Sources.
- 4 § 1801.8. Environmental Protection Agency Determination.
- 5 § 1802. Definitions.
- 6 § 1803. Application Requirements.
- 7 § 1803.1. Application Submittal.
- 8 § 1803.2. Application Content.
- 9 § 1803.3. Lowest Achievable Emission Rate (LAER).
- 10 § 1803.4. Certification of Compliance.
- 11 § 1803.5. Analysis of Alternatives.
- 12 § 1803.6. Application Fees.
- 13 § 1804. Emissions Offsets.
- 14 § 1804.1 Offset Requirements.
- 15 § 1804.2. Timing.
- 16 § 1804.3. Quantity.
- 17 § 1804.4. Emission Reduction Requirements.
- 18 § 1804.5 Restrictions on Trading Pollutants.
- 19 § 1805. Administrative Requirements.
- 20 § 1805.1. Ambient Air Quality Standards.
- 21 § 1805.2. Air Quality Models.
- 22 § 1805.3. Stack Height Procedures.
- 23 § 1806. Nonattainment Major New Source Review (NSR) Permit-
- 24 Decision.
- 25 § 1806.1. Preliminary Decision.
- 26 § 1806.2. Nonattainment Major New Source Review (NSR) Permit-
- 27 Preliminary Decision Requirements.

- 1 § 1806.3. Nonattainment Major New Source Review (NSR) Permit
2 Contents.
- 3 § 1806.4. Nonattainment Major New Source Review (NSR) Permit-Final
4 Decision.
- 5 § 1806.5. Ongoing Permit Requirements.
- 6 § 1806.6. Technology Clearinghouse.
- 7 § 1807. Source Obligations.
- 8 § 1807.1. Enforcement.
- 9 § 1807.2. Termination.
- 10 § 1807.3. Compliance.
- 11 § 1807.4. Relaxation in Enforceable Limitations.
- 12 § 1808. Public Participation.
- 13 § 1809. Plant-Wide Applicability Limits (PAL).
- 14 § 1810. Invalidation.
- 15 § 1811. Effective Date for Referenced Federal Regulations.
- 16 **§ 1801. Applicability Procedures.**
- 17 **§ 1801.1. Preconstruction Review Requirements.**
- 18 (a) The preconstruction review requirements of this rule apply to the
19 proposed construction of any new major stationary source or major modification in
20 Guam that is major for a nonattainment pollutant, if the stationary source or
21 modification is located anywhere in the designated nonattainment area, except:
- 22 (1) as provided in §1809 of this rule; and
- 23 (2) this rule’s provisions requiring the application of the lowest
24 achievable emission rate (LAER) and offsets do not apply for purposes of the
25 1971 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS)
26 with respect to electric generating units in the Piti nonattainment area for the
27 1971 SO₂ NAAQS, while this rule’s provisions requiring the application of

1 LAER and offsets do apply to such units for purposes of the 2010 SO₂
2 NAAQS.

3 (b) Sources subject to this rule may also be subject to other Guam
4 Environmental Protection Agency (GEPA) rules and regulations. For purposes of
5 the implementation and enforcement of this rule, the provisions and requirements of
6 this rule, including, but not limited to, the requirements for obtaining a
7 nonattainment major NSR permit, application submittal and content, conditional
8 approval, public participation, and granting a nonattainment major New Source
9 Review (NSR) permit, shall take precedence over any other such provisions and
10 requirements in other GEPA rules and regulations. To the extent that other GEPA
11 rules or regulations may affect the stringency or applicability of this rule, such other
12 rules and regulations shall not apply for purposes of the implementation or
13 enforcement of this rule.

14 **§ 1801.2. Nonattainment Major New Source Review (NSR) Permit**
15 **Requirement.**

16 No new major stationary source or major modification to which the
17 requirements of this rule apply shall begin actual construction without first obtaining
18 a nonattainment major NSR permit from the reviewing authority, pursuant to this
19 rule.

20 **§ 1801.3. Emission Calculation Requirements to Determine New**
21 **Source Review (NSR) Applicability.**

22 (a) New Major Stationary Sources. The definition of Major Stationary
23 Source as incorporated by reference in § 1802 shall be used to determine if a new or
24 modified stationary source is a new major stationary source.

25 (b) Major Modifications. The provisions set out in Subsections (1) through
26 (5) of this Section shall be used to determine if a proposed project will result in a

1 major modification. These provisions shall not be used to determine the quantity of
2 offsets required for a project subject to the requirements of this rule.

3 (1) Except as otherwise provided in § 1801.4, a project is a major
4 modification for a nonattainment pollutant if it causes two (2) types of
5 emissions increases: a significant emissions increase and a significant net
6 emissions increase. The project is not a major modification if it does not cause
7 a significant emissions increase. If the project causes a significant emissions
8 increase, then the project is a major modification only if it also results in a
9 significant net emissions increase.

10 (2) The procedure for calculating (before beginning actual
11 construction) whether a significant emissions increase will occur depends
12 upon the type of emissions units being added or modified as part of the project,
13 according to Subsections (3) through (5) of this Section. The procedure for
14 calculating (before beginning actual construction) whether a significant net
15 emissions increase will occur at the major stationary source is contained in
16 the definition of *net emissions increase*. Regardless of any such
17 preconstruction projections, a major modification results if the project causes
18 a significant emissions increase and a significant net emissions increase.

19 (3) Actual-to-Projected-Actual Applicability Test for Projects that
20 Only Involve Existing Emissions Units. A significant emissions increase of a
21 nonattainment pollutant is projected to occur if the sum of the difference
22 between the projected actual emissions and the baseline actual emissions, for
23 each existing emissions unit, equals or exceeds the significant amount for that
24 pollutant.

25 (4) Actual-to-Potential Test for Projects that Only Involve
26 Construction of a New Emissions Unit(s). A significant emissions increase of
27 a nonattainment pollutant is projected to occur if the sum of the difference

1 between the potential to emit from each new emissions unit following
2 completion of the project and the baseline actual emissions of these units
3 before the project equals or exceeds the significant amount for that pollutant.

4 (5) Hybrid Test for Projects that Involve Multiple Types of
5 Emissions Units. A significant emissions increase of a nonattainment
6 pollutant is projected to occur if the sum of the emissions increases for each
7 emissions unit, using the method specified in Subsections (3) or (4) of this
8 Section, as applicable, with respect to each emissions unit, equals or exceeds
9 the significant amount for that pollutant.

10 **§ 1801.4. Major Sources with Plant-Wide Applicability Limitations**
11 **(PAL).**

12 For any major stationary source with a Plant-Wide Applicability Limitation
13 (PAL) permit for a nonattainment pollutant, the major stationary source shall comply
14 with the requirements in § 1809 of this rule.

15 **§ 1801.5. Projects That Rely on a Projected Actual Emissions Test.**

16 Except as otherwise provided in Subsection (g)(3) of this Section, the
17 provisions of this Section shall apply with respect to any nonattainment pollutant
18 that is emitted from projects at existing emissions units located at a major stationary
19 source, other than a source with a PAL permit, when there is a reasonable possibility,
20 within the meaning of Subsection (g) of this Section, that a project that is not a part
21 of a major modification may result in a significant emissions increase of such
22 pollutant, and the owner or operator elects to use the method specified in paragraphs
23 (B)(1) through (B)(3) of the definition of *projected actual emissions* to calculate
24 *Projected Actual Emissions* [40 CFR 51.165(a)(xxviii)(A)].

25 (a) Before beginning actual construction of the project, the owner or
26 operator shall document and maintain a record of the following information:

- 27 (1) a description of the project;

1 (2) identification of the emissions unit(s) whose emissions of
2 a regulated NSR pollutant could be affected by the project; and

3 (3) a description of the applicability test used to determine that
4 the project is not a major modification for any regulated NSR pollutant,
5 including the baseline actual emissions, the *Projected Actual*
6 *Emissions*, the amount of emissions excluded under paragraph (B)(3)
7 of the definition of *projected actual emissions* [40 CFR
8 51.165(a)(xxviii)(A)], and an explanation for why such amount was
9 excluded, and any netting calculations, if applicable.

10 (b) If the emissions unit is an existing emissions unit, before
11 beginning actual construction, the owner or operator shall provide a copy of
12 the information set out in Subsection (a) of this Section to the GEPA
13 Administrator. The owner or operator shall be subject to the requirements of
14 other GEPA rules and regulations and other applicable requirements.

15 (c) The owner or operator shall monitor the emissions of any
16 regulated NSR pollutant that could increase as a result of the project and that
17 are emitted by any emissions unit identified in Subsection (a)(2) of this
18 Section; and calculate and maintain a record of the annual emissions, in tons
19 per year (tpy), on a calendar year basis as long as the emission unit is in
20 operation and has not been decommissioned.

21 (d) If the emissions unit is an existing electric utility steam
22 generating unit, the owner or operator shall submit a report to the GEPA
23 Administrator within sixty (60) days after the end of each calendar year during
24 which records must be generated under Subsection (c) of this Section, setting
25 out the unit's annual emissions during the calendar year that preceded
26 submission of the report.

1 (e) If the emissions unit is an existing emissions unit other than an
2 electric utility steam generating unit, the owner or operator shall submit a
3 report to the GEPA Administrator if the annual emissions, in tpy, from the
4 project identified in Subsection (a)(2) of this Section exceed the baseline
5 actual emissions by a significant amount for that regulated NSR pollutant, and
6 if such emissions differ from the Projected Actual Emissions (prior to
7 exclusion of the amount of emissions specified under paragraph (B)(3) of the
8 definition of *Projected Actual Emissions* [40 CFR 51.165(a)(xxviii)(A)], as
9 documented and maintained pursuant to Subsection (a)(3) of this Section.
10 Such report shall be submitted to the GEPA Administrator within sixty (60)
11 days after the end of such year. The report shall contain the following:

12 (1) the name, address, and telephone number of the
13 major stationary source;

14 (2) the annual emissions, as calculated pursuant to
15 Subsection (c) of this Section; and

16 (3) any other information that the owner or operator
17 wishes to include in the report (e.g., an explanation as to why
18 the emissions differ from the preconstruction projection).

19 (f) The owner or operator of the source shall make the information
20 required to be documented and maintained pursuant to this Section available
21 for review upon a request for inspection by the GEPA Administrator or the
22 general public pursuant to the requirements contained in § 1207 of this
23 Chapter.

24 (g) A “reasonable possibility” under this Section occurs when the
25 owner or operator calculates the project to result in either:

26 (1) a projected actual emissions increase of at least fifty
27 percent (50%) of the amount that is a “significant emissions

1 increase,” as defined in this rule (without reference to the amount
2 that is a significant net emissions increase), for the regulated
3 NSR pollutant; or

4 (2) a projected actual emissions increase that, added to
5 the amount of emissions excluded under paragraph (B)(3) of the
6 definition of *Projected Actual Emissions* [40 CFR
7 51.165(a)(xxviii)(A)] sums to at least fifty percent (50%) of the
8 amount that is a “significant emissions increase,” as defined in
9 this rule (without reference to the amount that is a significant net
10 emissions increase), for the regulated NSR pollutant.

11 (3) For a project in which a reasonable possibility
12 occurs only within the meaning of Subsection (g)(2), and not also
13 within the meaning of Subsection (g)(1), the provisions of
14 Subsections (b) through (e) of this Section do not apply to the
15 project.

16 **§ 1801.6. Secondary Emissions.**

17 Secondary emissions shall not be considered in determining whether a
18 stationary source would qualify as a major stationary source. If a stationary source
19 is subject to this rule on the basis of direct emissions from the stationary source, the
20 requirements of §1804 must also be met for secondary emissions.

21 **§ 1801.7. Stationary Sources.**

22 For purposes of this rule, the term stationary source does not refer to the source
23 of emissions resulting directly from an internal combustion engine for transportation
24 purposes or from a nonroad engine or nonroad vehicle as defined in §216 of the
25 Clean Air Act.

26 **§ 1801.8. Environmental Protection Agency Determination.**

1 Notwithstanding any other requirements of this rule governing the issuance of
2 a nonattainment major NSR permit, the GEPA Administrator shall not issue a
3 nonattainment major NSR permit to a new major stationary source or major
4 modification subject to the requirements of this rule if the federal Environmental
5 Protection Agency has determined that the SIP is not being adequately implemented
6 for the nonattainment area in which the proposed source is to be constructed or
7 modified in accordance with the requirements of Title I, Part D of the Clean Air Act.

8 **§ 1802. Definitions.**

9 For the purposes of this rule, the definitions provided in Subsections (a), (b),
10 and (c) of this Section apply to the terms used in this rule. In the event of any
11 discrepancy between the definitions specified in Subsections (a), (b), and (c) of this
12 Section, the definition in the Subsections that is listed first shall control.

13 (a) The definitions contained in 40 CFR 51.165(a)(1) shall apply,
14 and are hereby incorporated by reference, with the exception of the definitions
15 of “Building, structure, facility, or installation” and of “Reviewing authority”,
16 which has the meaning specified in Subsection (b)(11) of this Section.

17 (b) The following definitions shall also apply:

18 (1) Building, structure, facility, or installation means all of the
19 pollutant-emitting activities which belong to the same industrial
20 grouping, are located on one (1) or more contiguous or adjacent
21 properties, and are under the control of the same person (or persons
22 under common control) except the activities of any vessel, unless the
23 vessel is ported for electrical generation for on-shore use or
24 consumption. Pollutant emitting activities shall be considered as part of
25 the same industrial grouping if they belong to the same *Major Group*
26 (*i.e.*, which have the same two-digit code) as described in the *Standard*
27 *Industrial Classification Manual, 1972*, as amended by the 1977

1 Supplement (U.S. Government Printing Office stock numbers 4101-
2 0065 and 003-005-00176-0, respectively).

3 (2) “Clean Air Act (CAA)” means the federal Clean Air Act,
4 42 U.S.C. 7401 *et seq.*, as amended.

5 (3) “Complete” means, in reference to an application, which
6 contains all of the information necessary for processing.

7 (4) “Emission reduction” means reductions of actual
8 emissions from emissions units.

9 (5) “GEPA” means the Guam Environmental Protection
10 Agency.

11 (6) “GEPA Administrator” means the Administrator of the
12 Guam Environmental Protection Agency or such Administrator's
13 designee.

14 (7) “Internal emission reductions” means emission reductions
15 which have occurred or will occur at the same major stationary source
16 where the proposed emissions increase will occur.

17 (8) “Nonattainment major NSR permit” means an air
18 pollution control permit, other than a PAL permit, that is issued in
19 accordance with the requirements of this rule.

20 (9) “Nonattainment pollutant” means any regulated NSR
21 pollutant for which Guam, or a portion of Guam, has been designated
22 as nonattainment, as codified in 40 CFR 81.353, as well as any
23 precursor of such regulated NSR pollutant specified in 40 CFR
24 51.165(a)(1)(xxxvii)(C).

25 (10) “Permanent” means an emission reduction which is
26 federally enforceable for the life of a corresponding increase in
27 emissions.

1 (11) “Reviewing authority” means the GEPA Administrator.

2 (12) “Shutdown” means the cessation of operation of any air
3 pollution control equipment or process equipment for any purpose.

4 (13) “Startup” means the setting into operation of any air
5 pollution control equipment or process equipment for any purpose
6 except routine phasing in of process equipment.

7 (14) “State Implementation Plan (SIP)” means the State
8 Implementation Plan approved or promulgated for Guam under §110
9 or 172 of the Clean Air Act.

10 (15) “Surplus” means the amount of emission reductions that
11 are, at the time of use of an emission reduction, not otherwise required
12 by federal or Guam law, not required by any legal settlement or consent
13 decree, and not relied upon to meet any requirement related to the Guam
14 State Implementation Plan (SIP). Examples of federal and Guam laws,
15 and SIP-related requirements, include, but are not limited to, the
16 following:

17 (A) the federally-approved Guam SIP;

18 (B) other adopted Guam air quality laws and regulations
19 not in the SIP, including, but not limited to, any requirement,
20 regulation, or measure that: (1) Guam has included on a legally
21 required and publicly available list of measures that are
22 scheduled for adoption by Guam in the future; or (2) is the
23 subject of a public notice distributed by Guam regarding an intent
24 to adopt such revision;

25 (C) any other source or source-category specific
26 regulatory or permitting requirement, including, but not limited
27 to, Reasonable Available Control Technology (RACT), New

1 Source Performance Standards (NSPS), National Emission
2 Standards for Hazardous Air Pollutants (NESHAP), Best
3 Available Control Measures (BACM), Best Available Control
4 Technology (BACT), and Lowest Achievable Emission Rate
5 (LAER); and

6 (D) any regulation or supporting documentation that is
7 required by the Federal Clean Air Act, but is not contained or
8 referenced in 40 CFR Part 52, including, but not limited to:
9 assumptions used in attainment and maintenance demonstrations
10 (including reasonable further progress demonstrations and
11 milestone demonstrations), including any proposed control
12 measure identified as potentially contributing to an enforceable
13 near-term emission reduction commitment; assumptions used in
14 conformity demonstrations; and assumptions used in emissions
15 inventories.

16 (16) “Temporary source” means an emission source such as a
17 pilot plant or a portable facility which will be located outside the
18 nonattainment area after less than a cumulative total of ninety (90) days
19 of operation in any twelve (12) continuous months.

20 (17) “Tons per year (tpy)” means annual emissions in tons.

21 (c) The definitions contained in 40 CFR 51.100 shall apply, and are
22 hereby incorporated by reference.

23 **§ 1803. Application Requirements.**

24 **§ 1803.1. Application Submittal.**

25 The owner or operator of any proposed new major stationary source or major
26 modification required to obtain a nonattainment major NSR permit pursuant to this
27 rule shall submit a complete, true, and correct application to obtain a nonattainment

1 major NSR permit to the GEPA Administrator, and include in the application
2 submittal the information listed in § 1803.2, as well as the demonstrations listed in
3 §§1803.3-1803.5. Designating an application complete for purposes of permit
4 processing does not preclude the GEPA Administrator from requesting or accepting
5 any additional information.

6 **§ 1803.2. Application Content.**

7 At a minimum, an application for a nonattainment major NSR permit shall
8 contain the following information related to the proposed new major stationary
9 source or major modification:

- 10 (a) identification of the applicant, including contact information;
- 11 (b) identification of address and location of the new or modified
12 source;
- 13 (c) an identification and description of all emission points, including
14 information regarding all regulated NSR pollutants emitted by all emissions
15 units included in the new source or modification;
- 16 (d) a process description of all activities, including design capacity,
17 which may generate emissions of regulated NSR pollutants in sufficient detail
18 to establish the basis for the applicability of standards and fees;
- 19 (e) a projected schedule for commencing construction and operation
20 for all emissions units included in the new source or modification;
- 21 (f) a projected operating schedule for each emissions unit included
22 in the new source or modification;
- 23 (g) a determination as to whether the new source or modification will
24 result in any secondary emissions;
- 25 (h) the emission rates of all regulated NSR pollutants, including
26 fugitive and secondary emission rates, if applicable. The emission rates must
27 be described in tpy and for such shorter term rates as are necessary to establish

1 compliance using the applicable standard reference test method or other
2 methodology specified (i.e., grams/liter, ppmv or ppmw, lbs/MMBtu);

3 (i) the calculations on which the emission rate information is based,
4 including fuel specifications, if applicable, and any other assumptions used in
5 determining the emission rates (e.g., HHV, sulfur content of natural gas);

6 (j) the calculations, pursuant to § 1801.3, used to determine
7 applicability of this rule, including the emission calculations (increases or
8 decreases) for each project that occurred during the contemporaneous period;

9 (k) the calculations, pursuant to §1804.3 (offset), used to determine
10 the quantity of offsets required for the new source or modification;

11 (l) identification of existing emission reduction credits or
12 identification of internal emission reductions, including related emission
13 calculations and proposed permit modifications required to ensure emission
14 reductions meet the offset integrity criteria of being real, surplus, quantifiable,
15 permanent and federally enforceable or enforceable as a practical matter;

16 (m) if applicable, a description of how performance testing will be
17 conducted, including test methods and a general description of testing
18 protocols.

19 **§ 1803.3. Lowest Achievable Emission Rate (LAER).**

20 The applicant shall submit an analysis demonstrating that LAER has been
21 proposed for each emissions unit included in the new major stationary source or
22 major modification that emits a nonattainment pollutant for which the new stationary
23 source or modification is classified as major.

24 **§ 1803.4. Certification of Compliance.**

25 The applicant shall submit a certification that each existing major stationary
26 source owned or operated by the applicant (or any entity controlling, controlled by,
27 or under common control with the applicant) in Guam is in compliance with all

1 applicable emission limitations and standards under the CAA or is in compliance
2 with an expeditious compliance schedule which is federally enforceable.

3 **§ 1803.5. Analysis of Alternatives.**

4 The applicant shall submit an analysis of alternative sites, sizes, production
5 processes, and environmental control techniques for the proposed source that
6 demonstrates the benefits of the proposed source significantly outweigh the
7 environmental and social costs imposed as a result of its location, construction, or
8 modification.

9 **§ 1803.6. Application Fees.**

10 The applicant shall pay the applicable fees specified in the applicable GEPA
11 fee rules for air pollution emission sources.

12 **§ 1804. Emissions Offsets.**

13 **§ 1804.1. Offset Requirements.**

14 (a) The emission increases of a nonattainment pollutant for which the new
15 stationary source or modification is classified as major shall be offset with federally
16 enforceable emission reductions or with internal emission reductions.

17 (b) Emission reductions from one (1) or more sources may be used, alone
18 or in combination with internal emission reductions, in order to satisfy offset
19 requirements.

20 (c) Emissions reductions achieved by shutting down an existing emissions
21 unit or curtailing production or operating hours may only be credited for offsets if
22 such reductions are surplus, permanent, quantifiable, and federally enforceable; and

23 (d) The shutdown or curtailment occurred after the last day of the base year
24 for the attainment plan for the specific pollutant; or

25 (e) The projected emissions inventory used to develop the attainment plan
26 explicitly includes the emissions from such previously shutdown or curtailed

1 emissions units. However, in no event may credit be given for shutdowns that
2 occurred before August 7, 1977.

3 **§ 1804.2. Timing.**

4 (a) Internal emission reductions used to satisfy an offset requirement must
5 be federally enforceable prior to the issuance of the nonattainment major NSR
6 permit, which relies on the emission reductions.

7 (b) Except as provided by Subsection (c) of this Section, the decrease in
8 actual emissions used to generate emission reductions or internal emission
9 reductions must occur no later than the commencement of operation of the new or
10 modified major stationary source.

11 (c) Where the new emissions unit is a replacement for an emissions unit
12 that is being shut down in order to provide the necessary offsets, the GEPA
13 Administrator may allow up to one hundred eighty (180) calendar days for
14 shakedown or commissioning of the new emissions unit before the existing
15 emissions unit is required to cease operation.

16 **§ 1804.3. Quantity.**

17 The quantity of emission reductions or internal emission reductions required
18 to satisfy offset requirements shall be determined in accordance with the following:

19 (a) The unit of measure for offsets, emission reductions, and internal
20 emission reductions shall be tpy. All calculations and transactions shall use
21 emission rate values rounded to the nearest one one-hundredth (0.01) tpy.

22 (b) The quantity of emission reductions or internal emission
23 reductions required shall be calculated as the product of the amount of
24 increased emissions, as determined in accordance with Subsection (c) of this
25 Section, and the offset ratio, as determined in accordance with Subsection (d)
26 of this Section.

1 (c) The amount of increased emissions shall be determined as
2 follows:

3 (1) When the offset requirement is triggered by the
4 construction of a new major stationary source, the amount of increased
5 emissions shall be the sum of the potential to emit of all emissions units.

6 (2) When the offset requirement is triggered by a major
7 modification of an existing major stationary source, the amount of
8 increased emissions shall be the sum of the differences between the
9 allowable emissions after the modification and the actual emissions
10 before the modification for each emissions unit.

11 (3) The amount of increased emissions includes fugitive
12 emissions.

13 (d) An offset ratio of 1:1 shall be used for each pound of SO₂
14 permitted to be emitted.

15 **§ 1804.4. Emission Reduction Requirements.**

16 (a) Internal emission reductions or emission reductions used to satisfy an
17 offset requirement shall be:

18 (1) real, surplus, permanent, quantifiable, and federally enforceable;
19 and

20 (2) surplus at the time of issuance of the nonattainment major NSR
21 permit containing the offset requirements.

22 (b) Permitted sources whose emission reductions are used to satisfy offset
23 requirements must appropriately amend or cancel their nonattainment major NSR
24 permit or other air pollution control permit, where applicable, to reflect their newly
25 reduced potential to emit, including practicably enforceable conditions to limit their
26 potential to emit.

1 (c) Emission reductions must be obtained from the same nonattainment
2 area.

3 (d) The use of emission reductions shall not provide:

4 (1) authority for, or the recognition of, any pre-existing vested right
5 to emit any regulated NSR pollutant;

6 (2) authority for, or the recognition of, any rights that would be
7 contrary to applicable law; or

8 (3) an exemption to a stationary source from any emission
9 limitations established in accordance with federal or Guam laws, rules, and
10 regulations.

11 **§ 1804.5. Restrictions on Trading Pollutants.**

12 The emission offsets obtained shall be for the same regulated NSR pollutant.

13 **§ 1805. Administrative Requirements.**

14 **§ 1805.1. Ambient Air Quality Standards.**

15 The GEPA Administrator may require the use of an air quality model to
16 estimate the effects of a new or modified stationary source. The analysis shall
17 estimate the effects of the new or modified stationary source, and verify that the new
18 or modified stationary source will not prevent or interfere with the attainment or
19 maintenance of any ambient air quality standard. In making this determination, the
20 GEPA Administrator shall take into account the mitigation of emissions through
21 offsets pursuant to this rule, and the impacts of transported pollutants on downwind
22 pollutant concentrations. The GEPA Administrator may impose, based on an air
23 quality analysis, offset ratios greater than the requirements of Subsection (d) of §
24 1804.3.

25 **§ 1805.2. Air Quality Models.**

26 (a) All required estimates of ambient concentrations, pursuant to this rule,
27 shall be based on the applicable air quality models, databases, and other

1 requirements specified in 40 CFR Part 51, Appendix W (“Guideline on Air Quality
2 Models”).

3 (b) Where an air quality model specified in 40 CFR Part 51, Appendix W,
4 is inappropriate, the model may be modified or another model substituted on written
5 request to the Administrator. Methods such as those outlined in the “Workbook for
6 the Comparison of Air Quality Models” (U.S. Environmental Protection Agency,
7 Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711,
8 May 1978) may be used to determine the comparability of air quality models.
9 Written approval from the USEPA and GEPA must be obtained for any modification
10 or substitution. In addition, use of a modified or substituted model must be subject
11 to public notification and the opportunity for public comment pursuant to §1419 of
12 this Chapter.

13 **§ 1805.3. Stack Height Procedures.**

14 The degree of emission limitation required of any source for control of any air
15 pollutant must not be affected by so much of any source’s stack height that exceeds
16 good engineering practice (GEP) or by any other dispersion technique, except as
17 provided in 40 CFR 51.118(b). For the purposes of this Section, the definitions in 40
18 CFR 51.100 shall apply.

19 (a) Before the GEPA Administrator issues a nonattainment major
20 NSR permit under this rule to a source with a stack height that exceeds GEP
21 stack height, the Control Officer shall notify the public of the availability of
22 the demonstration study and provide opportunity for a public hearing.

23 (b) Any field study or fluid model used to demonstrate GEP stack
24 height and any determination concerning excessive concentration must be
25 approved by the EPA and the GEPA Administrator prior to any emission limit
26 being established.

1 (c) The provisions of §1805.3 do not restrict, in any manner, the
2 actual stack height of any stationary source or facility.

3 **§ 1806. Nonattainment Major New Source Review (NSR) Permit –**
4 **Decision.**

5 **§ 1806.1. Preliminary Decision.**

6 Following acceptance of an application as complete, the GEPA Administrator
7 shall perform the evaluations required to determine if the proposed new major
8 stationary source or major modification will comply with all applicable GEPA,
9 Guam and federal rules, regulations, or statutes, including, but not limited to, the
10 requirements under § 1803 of this rule, and shall make a preliminary written decision
11 as to whether a nonattainment major NSR permit should be approved, conditionally
12 approved, or denied. The decision shall be supported by a succinct written analysis.
13 The decision shall be based on the requirements in force on the date the application
14 is deemed complete, except when a new federal requirement, not yet incorporated
15 into this rule, applies to the new or modified source.

16 **§ 1806.2. Nonattainment Major New Source Review (NSR) Permit –**
17 **Preliminary Decision Requirements.**

18 (a) Prior to issuance of a preliminary written decision to issue a
19 nonattainment major NSR permit for a new major stationary source or major
20 modification, the GEPA Administrator shall determine:

21 (1) that each emissions unit(s) that constitutes the new source or
22 modification will not violate any applicable requirement of the Guam SIP;
23 and

24 (2) that the emissions from the new or modified stationary source
25 will not interfere with the attainment or maintenance of any applicable
26 national ambient air quality standard; and

1 (3) that the emission limitation for each emissions unit that
2 constitutes the new source or modification specifies LAER for such units. If
3 the GEPA Administrator determines that technological or economic
4 limitations on the application of measurement methodology to a particular
5 class of sources would make the imposition of an enforceable numerical
6 emission standard infeasible, the GEPA Administrator may instead prescribe
7 a design, operational, or equipment standard. In such cases, the GEPA
8 Administrator shall make his/her best estimate as to the emission rate that will
9 be achieved and must specify that rate in the application review documents.
10 Any nonattainment major NSR permit issued without an enforceable
11 numerical emission standard must contain enforceable conditions which
12 ensure that the design characteristics or equipment will be properly
13 maintained or that the operational conditions will be properly performed to
14 continuously achieve the assumed degree of control. Such conditions shall be
15 enforceable as emission limitations by private parties under §304 of the CAA.
16 The term “emission limitation” shall also include such design, operational, or
17 equipment standards; and

18 (4) the quantity of emission reductions or internal emission
19 reductions required to offset the new source or modification, pursuant to
20 §1804.3; and

21 (5) that all emission reductions or internal emission reductions
22 required for the new source or modification have been identified and have
23 been made federally enforceable or legally and practicably enforceable; and

24 (6) that the quantity of emission reductions or internal emission
25 reductions determined under Subsection (b) of §1804.3 will be surrendered
26 prior to commencing operation.

1 (b) Temporary sources and emissions resulting from the construction phase
2 of a new source are exempt from Subsections (a)(4), (a)(5) and (a)(6) of this Section.

3 **§ 1806.3. Nonattainment Major New Source Review (NSR) Permit**
4 **Contents.**

5 (a) A nonattainment major NSR permit for a new major stationary source
6 or major modification shall contain terms and conditions:

7 (1) which ensure compliance with all applicable requirements and
8 which are enforceable as a legal and practical matter; and

9 (2) sufficient to ensure that the major stationary source or major
10 modification will achieve LAER in accordance with Subsections (b) and (c)
11 of this Section.

12 (b) A new major stationary source shall achieve LAER for each
13 nonattainment pollutant for which the source is classified as major.

14 (c) A major modification shall achieve LAER for each nonattainment
15 pollutant for which the modification would result in a significant net emissions
16 increase. This requirement applies to each proposed emissions unit at which a net
17 emissions increase in the nonattainment pollutant would occur as a result of a
18 physical change, or change in the method of operation of the emissions unit.

19 **§ 1806.4. Nonattainment Major New Source Review (NSR) Permit –**
20 **Final Decision.**

21 (a) Prior to making a final decision to issue a nonattainment major
22 NSR permit for a new major stationary source or major modification, the
23 GEPA Administrator shall consider all written comments that are submitted
24 within thirty (30) days of public notification and all comments received at any
25 public hearing(s) in making a final determination on the approvability of the
26 application and the appropriate nonattainment major NSR permit conditions.
27 The GEPA Administrator shall make all comments available, including the

1 GEPA Administrator’s response to the comments, for public inspection in the
2 same locations where the GEPA Administrator made preconstruction
3 information relating to the proposed source or modification available as per
4 the requirements of §1808.

5 (b) The GEPA Administrator shall deny any application for a
6 nonattainment major NSR permit if the GEPA Administrator finds the new
7 source or modification would not comply with the standards and requirements
8 set forth in GEPA or federal rules or regulations.

9 (c) The GEPA Administrator shall make a final decision whether to
10 issue or deny the nonattainment major NSR permit after determining that the
11 nonattainment major NSR permit will or will not ensure compliance with all
12 applicable emission standards and requirements.

13 (d) The GEPA Administrator shall notify the applicant in writing of
14 the final decision and make such notification available for public inspection
15 at the same location where the GEPA Administrator made preconstruction
16 information and public comments relating to the source available.

17 **§ 1806.5. Ongoing Permit Requirements.**

18 The applicable terms and conditions of an issued nonattainment major NSR
19 permit shall remain in effect to govern source operation. Such terms and conditions
20 shall be included in any renewal or extension of the permit and any successive air
21 pollution control permit or renewal or extension thereof subsequently issued by the
22 GEPA Administrator for the same emission units.

23 **§ 1806.6. Technology Clearinghouse.**

24 Within thirty (30) days of the issuance of any permit under this rule, the GEPA
25 Administrator shall submit control technology information from the permit to the
26 USEPA Administrator for the purposes listed in § 173(d) of the CAA.

27 **§ 1807. Source Obligations.**

1 **§ 1807.1. Enforcement.**

2 Any owner or operator who constructs or operates a source or modification
3 not in accordance with the application submitted pursuant to this rule, any changes
4 to the application as required by the GEPA Administrator, or the terms of its
5 nonattainment major NSR permit or a renewal or extension thereof, shall be subject
6 to enforcement action.

7 **§ 1807.2. Termination.**

8 Approval to construct shall terminate if construction is not commenced within
9 eighteen (18) months after receipt of such approval, if construction is discontinued
10 for a period of eighteen (18) months or more, or if construction is not completed
11 within a reasonable time. The GEPA Administrator may extend the eighteen (18)-
12 month period upon a satisfactory showing of good cause why an extension is
13 justified. This provision does not apply to the time period between construction of
14 the approved phases of a phased construction project; each phase must commence
15 construction within eighteen (18) months of the projected and approved
16 commencement date.

17 **§ 1807.3. Compliance.**

18 Approval to construct shall not relieve any owner or operator of the
19 responsibility to comply fully with applicable provisions of the SIP and any other
20 requirements under Guam or federal law.

21 **§ 1807.4. Relaxation in Enforceable Limitations.**

22 At such time that a particular stationary source or modification becomes a
23 major stationary source or major modification solely by virtue of a relaxation in any
24 enforceable limitation which was established after August 7, 1980, on the capacity
25 of the stationary source or modification to emit a pollutant, then the requirements of
26 this rule shall apply to the stationary source or modification as though construction
27 had not yet commenced on the stationary source or modification.

1 **§ 1808. Public Participation.**

2 After the GEPA Administrator has made a preliminary written decision to
3 issue a nonattainment major NSR permit for a new major stationary source or major
4 modification, as specified in §§1806.1 and 1806.2, the GEPA Administrator shall:

5 (a) publish, in at least one (1) newspaper of general circulation in
6 Guam, a notice stating the preliminary decision of the GEPA Administrator,
7 noting how pertinent information can be obtained, including how the public
8 can access the information specified in §1808(b), and inviting written public
9 comment for a thirty (30)-day period following the date of publication. The
10 notice shall include the time and place of any hearing that may be held,
11 including a statement of procedure to request a hearing (unless a hearing has
12 already been scheduled);

13 (b) no later than the date the notice of the preliminary written
14 determination is published, make available in at least one (1) location, a copy
15 of all materials the applicant submitted, a copy of the preliminary decision, a
16 copy of the proposed nonattainment major NSR permit, and a copy or
17 summary of other materials, if any, considered in making the preliminary
18 written decision;

19 (c) send a copy of the notice of public comment to the applicant,
20 EPA Region 9, any persons requesting such notice, and any other interested
21 parties, such as the Mayor of the village where the source would be located,
22 the Guam Land Use Commission, and any federal land manager whose lands
23 may be affected by emissions from the source or modification;

24 (d) provide opportunity for a public hearing for persons to appear
25 and submit written or oral comments on the air quality impact of the source,
26 alternatives to it, the control technology required, and other appropriate
27 considerations, if in the GEPA Administrator's judgment such a hearing is

1 warranted. The GEPA Administrator shall give notice of any public hearing
2 at least thirty (30) days in advance of the hearing.

3 **§ 1809. Plant-Wide Applicability Limits (PAL).**

4 The GEPA Administrator shall issue a Plant-wide Applicability Limit (PAL)
5 permit according to the provisions contained in 40 CFR 51.165(f)(1) through (14).
6 The provisions of 40 CFR 51.165(f)(1) through (14) are hereby incorporated by
7 reference.

8 **§ 1810. Invalidation.**

9 If any provision of this rule or the application of such provision to any person
10 or circumstance is held invalid, the remainder of this rule or the application of such
11 provision to persons or circumstances other than those as to which it is held invalid,
12 shall not be affected thereby.

13 **§ 1811. Effective Date for Referenced Federal Regulations.**

14 All references and citations in this rule to Title 40 of the Code of Federal
15 Regulations (CFR) refer to the referenced federal regulation as in effect on October
16 17, 2022.”

17 **Section 3. Effective Date.** This Act shall be effective upon enactment.

18 **Section 4. Severability.** If any provision of this Act or its application to any
19 person or circumstance is found to be invalid or inorganic, such invalidity shall not
20 affect other provisions or applications of this Act that can be given effect without
21 the invalid provision or application, and to this end the provisions of this Act are
22 severable.